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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,509	12/13/2001	Parker Small	UF156IB-D4	7319
29847	7590	12/09/2003	EXAMINER	
BEUSSE BROWNLEE WOLTER MORA & MAIRE 390 N. ORANGE AVENUE SUITE 2500 ORLANDO, FL 32801			GITOMER, RALPH J	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 12/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/015,509

Applicant(s)

SMALL ET AL.

Examiner

Ralph Gitomer

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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The amendment received 11/6/2003 has been entered and claim 31 is currently pending in this application. Please update the specification regarding the related cases.

A Form 1449 has been received but no references are found in the file and the cited references are not found in the parent file, hence none of the references have been considered. Please inform the examiner as to which application first enables the present claim to determine the proper priority date. The presently claimed kit is disclosed in the specification of 6,551,791 filed 6/19/2000 and that is the priority date granted at this time. It is understood there are three other related pending applications, 10/015,520, 10/015,521, and 10/015,525, none of which have kit claims pending.

The kit claim is free of the cited art, none of which teaches or fairly suggests a kit including a means to distinguish allergic rhinitis, bacterial sinusitis or viral sinusitis.

Claim 31 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 31(b), "said nasal secretion" lacks definite antecedent basis. Further, step (b) is not understood as to how the means depends from the result. Also, sinusitis is understood to mean an inflammation of a sinus of the skull which could be from any cause. This is would encompass "upper respiratory tract viral infection or allergic rhinitis.

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The title of the invention is not aptly descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The Abstract of the Disclosure is objected to because it is not directed to the present claim. Correction is required. See M.P.E.P. § 608.01(b).

The following prior art pertinent to applicant's disclosure is made of record and not relied upon:

Small (6,551,791 and 5,910,421) are related patents.

Gwaltney (5,492,689) teaches treating sinusitis.

Bloch-Michel (EP 1 096 258 A1) teaches diagnosing nasal allergies.

Peebles (J of Immuno Methods) teaches diagnosing allergic rhinitis.

Ponkau (Mayo Clinic Proceedings) teaches diagnosing sinusitis.

Litvyakova (Annals of Allergy, Asthma, and Immunology) teaches nasal provocation testing.

Jankowski (Rhinology) teaches testing nasal secretions.

Kellner (Medizinische Laboratorium) teaches fluid crystals.

Eichner (Allergologie) teaches diagnosing nasal allergy.

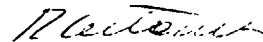
Holt (Otolaryngology) teaches collecting nasal secretions.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (703) 308-1235. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Ralph Gitomer
Primary Examiner
Art Unit 1651

10/15/2009
R. GITOMER
10/15/2009